

JSB

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

**BERNARD MCGEE
aka Pete Smith**

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CR-10-00162-CG

MOTION IN LIMINE

COMES NOW the United States of America, by and through its attorney, Kenyen R. Brown, the United States Attorney for the Southern District of Alabama, and respectfully moves this Honorable Court to prohibit any mention, discussion, inference, or suggestion that any alleged victim/witness in this matter previously engaged in other sexual behavior or was sexually predisposed, pursuant to Federal Rule of Evidence 412. The basis for this motion is as follows:

1. The defendant was arrested on or about June 1, 2010, at or near 6232 Spanish Trail Drive in Mobile, Alabama, and charged with Possession and Production of Child Pornography.

2. By virtue of the charge, the United States alleges the defendant “did knowingly employ, use, persuade, induce, entice, and coerce” a minor to engage and assist in sexually explicit conduct. In this case, the explicit conduct is the facilitation and production of child pornography depictions of herself and another victim/witness.

3. The United States anticipates the defendant will improperly suggest the minor in this case, otherwise known as J.S., was a willing participant in the facilitation and production of images of herself and another victim/witness, due to her sexual predisposition, sexual orientation, and/or sexual history.

4. The aforementioned minor, J.S., is 13 years-old and incapable of legally consenting to sexually explicit conduct, particularly at the direction of the defendant. Any suggestion or mention

to the contrary, whether for substantive or impeachment purposes, should be prohibited.

5. Rule 412 aims to safeguard alleged victims/witnesses against the invasion of privacy, potential embarrassment and sexual stereotyping that is associated with public disclosure of intimate sexual details and the infusion of sexual innuendo into the fact-finding process. By affording victims/witnesses protection in most instances, the rule also encourages victims of sexual exploitation and misconduct to institute and participate in legal proceedings against alleged offenders. Therefore, the United States respectfully moves this Honorable Court to prohibit such mention.

Respectfully submitted this 5th day of October, 2010.

KENYEN R. BROWN
UNITED STATES ATTORNEY
By:

/s/ Joshua S. Bearden
Joshua S. Bearden (bearj7503)

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CERTIFICATE OF SERVICE

I hereby certify that, on October 5, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to Greg Hughes, Esquire, counsel for defendant.

/s/ Joshua S. Bearden
Joshua S. Bearden
Assistant United States Attorney